

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to
Develop Additional Methods to
Implement the California Renewables
Portfolio Standard Program.

Rulemaking R.06-02-012

**COMMENTS OF THE GREEN POWER INSTITUTE
ON THE PROPOSED DECISION OF ALJ SIMON ON TREC's**

April 15, 2009

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COMMENTS OF THE GREEN POWER INSTITUTE ON THE PROPOSED DECISION OF ALJ SIMON ON TRECs

Introduction

Pursuant to Rules 14.3 and 14.6 of the Commission's Rules of Practice and Procedure, the Green Power Institute (GPI) respectfully submits these *Comments of the Green Power Institute on the Proposed Decision of ALJ Simon on TRECs*, in Proceeding R.06-02-012, **Order Instituting Rulemaking to Develop Additional Methods to Implement the California Renewables Portfolio Standard Program**. These *Comments* respond to the March 26, 2009, Proposed Decision on TRECs. We previously responded to the initial version (October 29, 2009) of the Proposed Decision on TRECs. In these *Comments* we address the issues of limitations on the use of TRECs, forward banking of TRECs, contracts with earmarking, TREC price caps, and deliverability.

Limitations on the Use of TRECs

The new Proposed Decision (PD) on tradable RECs imposes a cap on the use of TRECs for RPS compliance by the state's three large IOUs of five percent of their annual procurement target (APT). The aggregate APT for these utilities in 2009 is approximately 28,750 GWh. This means that the cap on TRECs for the three IOUs in 2009 is 1,440 GWh, which is comparable to the IOU-projected 2009 aggregate deficit for the three of approximately 1,600 GWhs (see March 1, 2009, IOU *RPS Compliance Filings*, filed in R.08-08-009). If these projections are accurate, it means that even with the proposed five-percent-of-APT cap on the use of TRECs, TRECs, if available, could just about eliminate the operating-year deficit (pre-flexible compliance) in 2009. This would not be the case in 2010, when APTs increase dramatically to twenty percent of retail sales, and the aggregate RPS procurement deficit is projected by the IOUs to be about 8,500 GWh. Under these conditions the five-percent cap would limit TREC use by the three IOUs in

2010 to 1,900 GWh, nowhere near enough to cover the deficit (this assumes that there would be a sufficient supply of TRECs available in the marketplace to cover the deficits, which is a highly questionable assumption, in our opinion).

The PD proposes to impose the five-percent-of-APT cap on the use of TRECs during the first three-year period of the TREC program's existence, 2009 – 2011. We believe that this cap will be overly restrictive in 2010 and 2011, when very large procurement deficits are projected. Of course, this might be a mostly academic concern, as we do not know where these kinds of quantities of TRECs would come from in any case, even if there were no cap on TREC use. Nevertheless, as a matter of principle we would recommend that the Commission at least double the proposed cap on TRECs in the PD to ten percent of APT, or go even higher than that. The Commission has long stated its desire to base the costs of the RPS program on the competitive marketplace. We say, let the market work to the maximum extent reasonable, without unnecessary restrictions. We believe that 5 percent is unnecessarily restrictive.

Forward Banking of TRECs

In the existing California RPS flexible-compliance program for bundled RECs, the rules allow for unlimited forward banking of bundled RECs that are procured in excess of an utility's annual procurement target. In formulating rules for the use of TRECs for California RPS compliance purposes, the PD proposes to limit the lifetime for TRECs to three years after they have been created. However, the PD then provides for the possibility of continued banking of TRECs that are retired in WREGIS without being designated for a current program obligation or product claim. The proposed forward banking of retired but undesignated TRECs is for an unlimited amount of time.

We are not sure what purpose there is in requiring TRECs to be moved into a WREGIS retirement account within three years, if the then retired but undesignated certificates are themselves bankable forward. It should be noted that WREGIS itself imposes no restrictions on forward banking of RECs. All RECs in WREGIS are time-stamped as to

their creation date, they have no expiration date, and once created, a REC is permanently a part of the WREGIS database. The PD argues that placing a three-year limit on the lifetime of TRECs will prevent hoarding, presumably by requiring TRECs that will be banked for more than three years to at least be committed to a particular account holder's retirement account before the end of three years, meaning that they can continue to be forward banked, but ultimately can only be used for a claim by the account holder who retired them before the end of three years.

In the opinion of the GPI, it would greatly simplify the RPS program rules if RECs retired in a given compliance period were required to be counted towards the retiring entity's obligation or claim for **that** period. In the system proposed in the PD, the CEC will have to track retired certificates in WREGIS that are being retired without an immediate purpose, in order to satisfy the three-year expiration limitation on the certificates themselves that the PD proposes to add to the RPS program rules. The tracking of undesignated but retired WREGIS certificates will have to be done outside of WREGIS, since upon retirement these certificates are permanently locked in place. In this sense, a technical correction should be made to a statement on pg. 54 of the PD: "WREGIS still tracks the RECs in the retirement account, but those RECs may not be traded or used for any other purpose." In fact, RECs that have been moved into retirement accounts are no longer tracked; they are maintained as permanent and unalterable records in the retirement sub-account into which they have been deposited.

We realize, given the current and projected RPS-deficit positions of the California IOUs, that the topic of forward banking of TRECs may be a purely theoretical exercise for the foreseeable future. Nevertheless, since the topic of forward banking does appear in the PD, we believe that simplifying the rules for forward banking of TRECs so as to be the same as the current rules for bundled RECs, which means unlimited forward banking of both, is worth doing. We see very little risk in allowing continued trading of TRECs beyond a three-year period after their creation. Indeed, utilities who hold bundled RECs that the PD envisions as being tradable (PD, § 4.9.2) will be able to continue to trade

these RECs for an unlimited time until they are ultimately retired. TRECs deserve the same treatment with respect to forward banking.

Contracts with Earmarking

In discussing the unbundling of RECs from the future years of bundled contracts, such as the current RPS PPAs, the PD notes that: “The potential unbundling and sale of RECs from bundled contracts that have been earmarked to make up shortfalls from prior years presents a special case (PD, pg. 57).” The PD’s proposed solution for this “special case” is to prevent the LSEs from unbundling RECs during the first three operating years of a contract that has been designated for earmarking: “An LSE may unbundle and trade RECs from the later years of a bundled contract that has been earmarked, but should be prohibited from unbundling any RECs generated in the first three years of deliveries under an earmarked contract (PD, pg. 57–58).” We wish to point out that current earmarking rules allow the utilities to designate groups of contracts as eligible for earmarking, and with the current RPS procurement deficits that are being incurred, it is our understanding that most RPS contracts for new projects are being designated for earmarking. This means that few of the new RPS contracts that are being signed today will be able to supply unbundled RECs until their fourth year of operations at the earliest, and that is too late to be used for earmarking.

We applauded the original PD’s decision to prohibit earmarking for contracts for unbundled TRECs. There should be no retreat on this issue in the final Decision. With ever increasing RPS procurement deficits looming on the horizon for all of the large California IOUs, in our opinion earmarking is being used, in effect, to rollover the procurement deficits of the IOUs by three years. A policy to allow a three-year rollover of RPS procurement deficits was specifically rejected in the Commission’s original RPS implementing Decision, D.03-06-071. We believe earmarking to be poor policy, which should not be encouraged. The integrity of the RPS program, and indirectly the state’s AB 32 program, are at stake.

TREC Price Caps

The PD makes a wise decision in adopting \$50 as the price cap for utility purchases of TRECs, the same level as the per-REC penalty for under-procurement of renewables, rather than using the \$35 cap in the staff proposal. We believe that this provides a consistent price signal for all kinds of RECs in the marketplace. However, it should be pointed out that with the current RPS procurement deficits that are being racked-up by the utilities, the maximum penalty level of \$25 million per year per utility is likely to reduce the average per-REC penalty to something that is considerably less than \$50.

Delivery to California Load

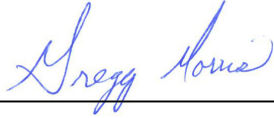
We wish to express our support for the PD's decision in § 4.8 to classify RECs from certain out-of-state generators whose deliveries of energy are decoupled in place and time from the renewable generator as TRECs. We believe that this is the correct designation. We support the more nuanced treatment of this subject in the current PD, as compared with the original PD. Legitimate load firming and shaping should be encouraged.

Conclusion

We recommend that the PD be passed with the revisions that we discuss in these *Comments*. In particular, we recommend that the Commission increase the proposed cap on the use of TRECs for the first three years of the program from 5 percent of APT to 10 percent of APT, eliminate restrictions on the forward banking of TRECs, and not allow earmarking for any TREC contracts.

Dated April 15, 2009, at Berkeley, California.

Respectfully Submitted,



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Appendix

Recommended Changes

Page 54, top of page, make the following technical correction:

WREGIS maintains indefinitely the record of certificates that have been placed ~~still tracks~~
~~the RECs~~ in the retirement account, but those RECs may not be traded or used for any other purpose.

Page 56, last paragraph, make clarifying addition as follows:

An LSE with a contract for bundled energy not subject to PUC §399.16(a)(5) or (6) should be able to “unbundle” and sell RECs from that contract ...

Table of Authorities

Decision D.03-06-071.

Proposed Changes to Findings of Fact, Conclusions of Law, and Orders

Findings of Fact

FF # 9, change to 10% of APT.

FF #s 11 and 13, eliminate.

Conclusions of Law

CL # 6a, change to: “No TREC contracts may be used for earmarking.”

Orders

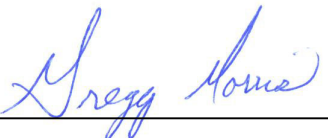
Order #s 8 and 9, eliminate.

Order # 13, change to: “No types of TREC contracts may be earmarked.”

Order # 15, change to 10% of APT.

PROOF OF SERVICE

I hereby certify that on April 15, 2009, in Berkeley, CA, I have served a copy of the COMMENTS OF THE GREEN POWER INSTITUTE ON THE PROPOSED DECISION OF ALJ SIMON ON TRECs upon all parties listed on the Service List for this proceeding, R-06-02-012. All parties have been served by email or first class mail, in accordance with Commission Rules.

A handwritten signature in blue ink, appearing to read "Gregory Morris", is written over a horizontal line.

Gregory Morris